

### § 39.103

paragraph (c)(1) of this section to passengers with a disability using those services.

(d) Each CRO must be thoroughly familiar with the requirements of this Part and the PVO's procedures with respect to passengers with a disability. The CRO is intended to be the PVO's "expert" in compliance with the requirements of this Part.

(e) You must ensure that each of your CROs has the authority to make dispositive resolution of complaints on behalf of the PVO. This means that the CRO must have the power to overrule the decision of any other personnel, except that the CRO may not be given authority to countermand a decision of the master of a vessel with respect to safety matters.

### § 39.103 What actions do CROs take on complaints?

When a complaint is made directly to a CRO (*e.g.*, orally, by phone, TTY) the CRO must promptly take dispositive action as follows:

(a) If the complaint is made to a CRO before the action or proposed action of PVO personnel has resulted in a violation of a provision of this Part, the CRO must take, or direct other PVO personnel to take, whatever action is necessary to ensure compliance with this Part.

(b) If an alleged violation of a provision of this Part has already occurred, and the CRO agrees that a violation has occurred, the CRO must provide to the complainant a written statement setting forth a summary of the facts and what steps, if any, the PVO proposes to take in response to the violation.

(c) If the CRO determines that the PVO's action does not violate a provision of this Part, the CRO must provide to the complainant a written statement including a summary of the facts and the reasons, under this Part, for the determination.

(d) The statements required to be provided under this section must inform the complainant of his or her right to complain to the Department of Transportation and/or Department of Justice. The CRO must provide the statement in person to the complainant in person if possible; otherwise, it

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must be transmitted to the complainant within 10 calendar days of the complaint.

### § 39.105 How must PVOs respond to written complaints?

(a) As a PVO, you must respond to written complaints received by any means (*e.g.*, letter, fax, e-mail, electronic instant message) concerning matters covered by this Part.

(b) A passenger making a written complaint, must state whether he or she had contacted a CRO in the matter, provide the name of the CRO and the date of the contact, if available, and enclose any written response received from the CRO.

(c) As a PVO, you are not required to respond to a complaint from a passenger postmarked or transmitted more than 45 days after the date of the incident.

(d) As a PVO, you must make a dispositive written response to a written disability complaint within 30 days of its receipt. The response must specifically admit or deny that a violation of this part has occurred. The response must be effectively communicated to the recipient.

(1) If you admit that a violation has occurred, you must provide to the complainant a written statement setting forth a summary of the facts and the steps, if any, you will take in response to the violation.

(2) If you deny that a violation has occurred, your response must include a summary of the facts and your reasons, under this Part, for the determination.

(3) Your response must also inform the complainant of his or her right to pursue DOT or DOJ enforcement action under this part, as applicable. DOT has enforcement authority under Title II of the ADA for public entities and under section 504 of the Rehabilitation Act for entities that receive Federal financial assistance; DOJ has enforcement authority under Title III of the ADA for private entities.

### § 39.107 Where may persons obtain assistance with matters covered by this regulation?

A passenger, PVO, or any other person may obtain information, guidance, or other assistance concerning 49 CFR

part 39 from then DOT Departmental Office of Civil Rights and/or DOT Office of General Counsel, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**§ 39.109 What enforcement actions may be taken under this Part?**

(a) The Department of Transportation investigates complaints and conducts reviews or other inquiries into the compliance with this Part of PVOs that are Title II entities.

(b) As a PVO subject to Title II of the ADA, you must be prepared to provide to the Department of Transportation a written explanation of your action in any situation in which you exclude or restrict an individual with a disability or any mobility or other assistive device used by such an individual with respect to the use of your vessel.

(c) The Department of Transportation investigates complaints conducts compliance reviews or other inquiries into the compliance of this Part of PVOs, whether private or public entities, that receive Federal financial assistance from the Department, under section 504 of the Rehabilitation Act of 1973, as amended.

(d) The Department may refer any matter concerning the compliance of PVOs with this Part to the Department of Justice for enforcement action.

(e) The Department of Justice investigates complaints and conducts reviews or other inquiries into the compliance with this Part of PVOs that are Title III entities.

(f) The Department of Justice may file suit in Federal court against both Title II and Title III PVOs for violations of this part.

**PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS**

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